

167835 *7/22/03*

LAW OFFICES  
**JONES, PATTERSON, SIMPSON & NEWTON, P.A.**

WILLIAM W. JONES, JR.  
RUSSELL P. PATTERSON  
MARK S. SIMPSON  
WM. WESTON JONES NEWTON  
CHAD B. HESS  
DAVID K. PINCKNEY  
JOSEPHINE T. WILLIS\*†  
\*ALSO ADMITTED IN DISTRICT OF COLUMBIA  
†HABLA ESPAÑOL

PROFESSIONAL ASSOCIATION  
HILTON HEAD OFFICES  
18 POPE AVE.  
P.O. DRAWER 7049  
HILTON HEAD ISLAND, SOUTH CAROLINA 29938  
TELEPHONE (843) 842-6111  
FAX # 843-686-1219  
E-MAIL jsplaw@jsplaw.net

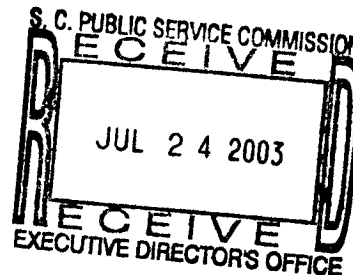
BLUFFTON OFFICES  
P.O. BOX 1938  
11 ARLEY WAY, SUITE 202  
WESTBURY FINANCIAL CENTER  
BLUFFTON, SC 29910  
TELEPHONE (843) 706-6111  
FAX (843) 706-2030  
E-MAIL jsplaw@jsplaw.net

PLEASE RESPOND TO THE BLUFFTON OFFICES

July 22, 2003

**VIA: FEDERAL EXPRESS**

Mr. Gary E. Walsh  
Executive Director  
South Carolina Public Service Commission  
101 Executive Center Drive, Suite 100  
Saluda Building  
Columbia, South Carolina 29210



**Re: Application of Hargray Wireless, L.L.C. for Designation as an Eligible Telecommunications Carrier**

Dear Mr. Walsh:

Enclosed are the original and five (5) copies of the Application of Hargray Wireless, L.L.C. for Designation as an Eligible Telecommunications Carrier in connection with the above-referenced matter.

Please do not hesitate to contact me if you have any questions regarding this matter.

With best wishes and kindest regards, I am

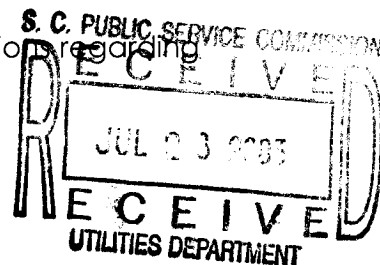
Sincerely,

**JONES, PATTERSON, SIMPSON & NEWTON, P.A.**

  
William W. Jones, Jr.

WWJjr;kbm  
Enclosures

c: David A. LaFuria, Esquire  
Steven M. Chernoff, Esquire  
Gloria S. Taggart  
James W. McDaniel





July 22, 2003

**VIA: FEDERAL EXPRESS**

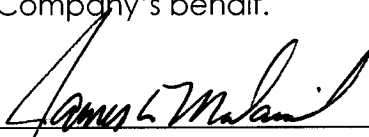
Public Service Commission  
of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, South Carolina 29210

**Re: Hargray Wireless, LLC  
High Cost Certification**

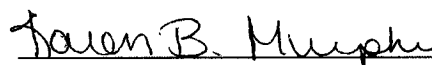
To the Commission:

Hargray Wireless, LLC ("Hargray") has submitted a Petition for ETC designation in the State of South Carolina, As required by Sections 54.313(b) and 54.314(b) of the Federal Communications Commission's rules, 47 C.F.R. Section 54.31(b), Hargray hereby submits the certification below in order to begin receiving high-cost support in its designated ETC area.

Accordingly, as Chief Operating Officer of Hargray, I hereby certify on behalf of the Company and under penalty of perjury that all high-cost support provided to the Company will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended, pursuant to Section 254 (e) of the Telecommunications Act of 1996. I also certify that I am authorized to make this certification on the Company's behalf.

  
\_\_\_\_\_  
James W. McDaniel  
Date: 7/22, 2003

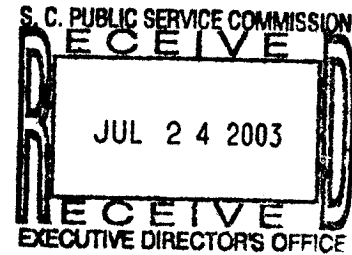
**SUBSCRIBED, SWORN TO AND ACKNOWLEDGED** before me this 22<sup>nd</sup> day of July, 2003.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: 09-07-2011

POSTED  
7/16/03

7/28/03 JUB

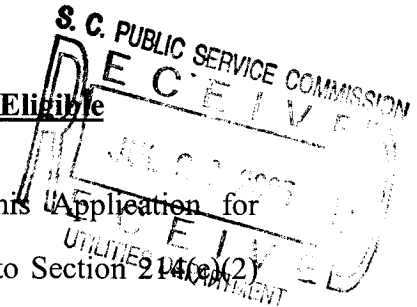
Before the  
Public Service Commission of  
South Carolina



Application of )  
 )  
Hargray Wireless, LLC )  
 )  
for Designation as an )  
Eligible Telecommunications )  
Carrier Under 47 U.S.C. § 214(e)(2) )

Docket No. 2003-227-C

**Application of Hargray Wireless, LLC for Designation as an Eligible  
Telecommunications Carrier**



Hargray Wireless, LLC ("Hargray"), by its counsel, submits this Application for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 54.201. Hargray requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") including, but not limited to, support for rural, insular and high-cost areas and low-income customers. Hargray does not request state support from the South Carolina Universal Service Fund. In support of this application, the following is respectfully shown:

**I. Authorization and Service Area**

1. Hargray is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and is a telecommunications carrier for the purposes of Part 54 of the FCC's rules.<sup>1</sup> Hargray is therefore considered a common carrier under the 1934 Communications Act, as amended ("Act").

2. Hargray is authorized by the FCC as the C Block personal communications service ("PCS") carrier in Basic Trading Area ("BTA") No. 410, which covers, in relevant part, the counties of Beaufort, Hampton, and Jasper in the southern portion of South Carolina. A map

<sup>1</sup> 47 C.F.R. § 54.1 *et seq.*

of Hargray's service area is attached hereto as Exhibit A. Hargray is a PCS provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). Hargray provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.703(a).

3. Section 214(e) of the Act requires the Public Service Commission of South Carolina ("PSC", "Commission") to designate Hargray as an ETC throughout the service area for which ETC status is sought, if Hargray agrees to (i) offer services that are supported by federal universal service support mechanisms, and (ii) advertise the availability of such services. In its *First Report and Order* implementing Sections 214(e) and 254, the FCC set forth the services a carrier must provide to be designated as an ETC in order to receive federal universal service support.<sup>2</sup>

4. Section 214(e)(2) of the Act provides that ETC designations shall be made for a "service area" designated by the state commission. In areas served by a rural telephone company, "service area" means the local exchange carrier ("LEC") study area unless and until the FCC and the states, taking into account recommendations of a Federal-State Joint Board on Universal Service ("Joint Board"), establish a different definition of service area for such company. *See* 47 C.F.R. § 54.207(b).

5. Other than the non-rural portion of Hargray's service area served by Verizon South, Inc., the LECs currently serving the areas for which Hargray seeks ETC designation are rural telephone companies as the term is defined in the Act. *See* 47 U.S.C. § 153(37). For those rural LEC study areas that Hargray serves in their entirety, the PSC may designate Hargray as an ETC without the need to redefine the incumbent rural LEC service area. Accordingly, Hargray requests ETC designation in the study areas of the incumbent LECs, listed in Exhibits B and C hereto, which provide service within Hargray's authorized service area

---

<sup>2</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8809-25 (1997) ("*First Report and Order*").

6. With regard to the service area of United Telephone Company of the Carolinas (“UTC”), Hargray requests ETC designation for the wire centers which are found within Hargray’s FCC-licensed service area. These wire centers are listed in Exhibit D hereto. As a PCS carrier, Hargray is restricted to serving the area in which it is authorized by the FCC to provide service. This authorized service area covers only certain portions of UTC’s service area. Before Hargray can receive federal high-cost support for customers it serves in those areas, UTC’s service area must be redefined such that each wire center is reclassified as a separate service area. *See* 47 C.F.R. § 54.207(c)(1). Accordingly, Hargray respectfully requests that the PSC make those findings necessary to enable Hargray to petition the FCC for concurrence in redefining “service area” to enable Hargray to be designated as an ETC throughout its licensed service area. To the extent Hargray serves only a portion of a wire center listed in Exhibit D, Hargray requests ETC designation in that portion of the wire center where it is authorized to provide service. *See infra*, Section V.

## **II. Hargray Offers the Supported Services to Qualify for Federal USF Support**

7. Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services, and (2) advertise the availability of such services and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). The services which are supported by the federal USF are:

1. voice grade access to the public switched network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and

9. toll limitation for qualifying low-income consumers.<sup>3</sup>

8. Hargray is a full-service wireless carrier which now offers, or is prepared to offer, all of these services, as described in detail below, to customers throughout its proposed ETC service area. As the FCC has acknowledged, Section 214(e) does not require the carrier requesting ETC designation to be actually providing the supported services throughout the proposed service area at the time of the request, only that the carrier reasonably demonstrate its capability and commitment to do so after it has received ETC designation.<sup>4</sup> Hargray commits to provide the supported services to all requesting customers in its ETC service area consistent with the statutory and regulatory requirements applicable to ETCs and is prepared to demonstrate its capability to meet this commitment. Therefore, Hargray satisfies the requirements of Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's rules.

9. Voice Grade Access. Hargray provides voice grade access to the public switched network. Hargray offers its subscribers this service at bandwidth between 300 and 3,000 hertz as required by 47 C.F.R. 54.101(a)(1), thereby providing voice grade access.

10. Local Usage. Hargray has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.<sup>5</sup> As it relates to local usage, the *October 1998 NPRM* sought comment on a definition of the public service package that must be offered by all ETCs.

---

<sup>3</sup> 47 C.F.R. § 54.101(a).

<sup>4</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168 (2000).

<sup>5</sup> See *Guam Cellular and Paging, Inc.*, CC Docket No. 96-45, DA 02-174 at para. 11 (C.C.B. rel. Jan. 25, 2002) ("*Guamcell*"); *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) ("*October 1998 NPRM*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) ("*Referral Order*").

Specifically, the FCC sought comment on how much, if any, local usage should be required to be provided to customers as part of a universal service offering.<sup>6</sup> In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide.<sup>7</sup> In 2002, the Joint Board did not specifically recommend an amount of local usage, but left it to the FCC to decide whether a minimum should be imposed. To date, the FCC has determined that when a carrier offers a variety of rate plans containing varying amounts of local usage, it meets that local usage requirement.<sup>8</sup>

11. Hargray offers numerous rate plans that provide customers with a variety of local usage included free of charge, ranging from a set number of minutes to unlimited local calling. Any minimum local usage requirement established by the FCC will be applicable to all designated ETCs, and Hargray will comply with any and all minimum local usage requirements adopted by the FCC.

12. DTMF Signaling. Hargray provides dual tone multi-frequency (“DTMF”) signaling, or the equivalent thereof, to facilitate the transportation of signaling throughout its network. Hargray currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling.

13. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.<sup>9</sup> Hargray provides

---

<sup>6</sup> See *October 1998 NPRM*, 13 FCC Rcd at 21277-21281.

<sup>7</sup> See *First Report and Order*, 12 FCC Rcd at 8813.

<sup>8</sup> See, e.g., *RCC Holdings, Inc.*, DA 02-3181 (W.C.B. rel. Nov. 27, 2002) (“*RCC Alabama Order*”) at ¶ 19; *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, *Memorandum Opinion and Order*, 17 FCC Rcd. 9589, 9593 (2002) (“*Pine Belt ETC Order*”). See also *Federal State Joint Board on Universal Service, Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 03-13 (rel. Feb. 25, 2003) (requesting public comment on, *inter alia*, the amount of local usage (if any) that should be required of ETCs).

<sup>9</sup> See *First Report and Order*, 12 FCC Rcd at 8810.

single party service, as that term is defined in Section 54.101 of the FCC's rules. *See* 47 C.F.R. § 54.101.

14. Access to Emergency Services. Hargray currently provides 911 access to emergency services throughout its service area.

15. Access to Operator Services. Hargray provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing "0".

16. Access to Interexchange Services. Hargray has signed interconnection agreements with interexchange carriers. These arrangements enable Hargray to provide its customers access to interexchange services. Customers may also "dial around" to reach their interexchange carrier of choice.

17. Access to Directory Assistance. Subscribers to Hargray's services are able to dial "411" or "555-1212" to reach directory assistance from their mobile phones.

18. Toll Limitation. Hargray provides toll limitation by utilizing its toll blocking capabilities, enabling Hargray to provide toll blocking service for Lifeline customers once Hargray is designated an ETC.

19. Pursuant to Section 54.201 of the FCC's rules, 47 C.F.R. § 54.201, Hargray will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. In addition, Hargray will advertise the availability of Lifeline and Link-up benefits throughout its service area by including mention of such benefits in advertising and reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Link-up benefits.

### **III. Statement of Need**

20. Many residents of South Carolina live in remote areas where it is cost-prohibitive to provide competitive wireline telecommunications services. As a result, consumers generally have only one service provider from which to choose. Hargray seeks to offer citizens of South



Carolina its service as an alternative to traditional wireline service. In order for Hargray's network to expand into underserved areas, federal high-cost loop funding must be provided so that infrastructure needed to serve remote areas can be fully deployed and competitive service can be delivered.

21. By granting ETC status to Hargray, the PSC will expedite the provision of competitive telephone service to the people living in those remote areas and provide a meaningful choice for many subscribers who have access to only one service provider.

#### **IV. Grant of Hargray's Application Would Serve the Public Interest**

22. In areas served by non-rural LECs, the Commission can designate Hargray as an ETC upon finding that the company meets the nine-point checklist and that it agrees to advertise the supported services throughout its proposed ETC service area.<sup>10</sup> In areas served by a rural telephone company, the Commission must also find that a grant of ETC status would serve the public interest.<sup>11</sup> In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative.<sup>12</sup>

---

<sup>10</sup> See *Cellular South Licenses, Inc.*, Docket No. 01-UA-0451 (Miss. PSC Dec. 18, 2001).

<sup>11</sup> See 47 U.S.C. § 214(e)(2).

<sup>12</sup> See, e.g., *Cellular South License, Inc.*, DA 02-3317 (W.C.B. rel. Dec. 4, 2002) ("*Cellular South Alabama Order*"); *RCC Alabama Order*, *supra*; *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) ("*Western Wireless Wyoming Order*"), *aff'd*, 24 CR 1216 (Oct. 19, 2001) ("*Western Wireless Recon. Order*"); *N.E. Colorado Cellular, Inc.*, Docket No. 00A-315T (Colo. ALJ Dec. 21, 2001, effective Jan. 11, 2002) ("*NECC Colorado Order*"); *RCC Minnesota, Inc. et al.*, Docket No. 2002-344 (Maine PUC May 13, 2003) ("*RCC Maine Order*"); *Midwest Wireless Communications, LLC*, PUC Docket No. PT6153/AM-02-686 (Minn. PUC March 19, 2003) ("*Midwest Minnesota Order*"); *Smith Bagley, Inc., Final Order*, Utility Case No. 3026 (Feb. 19, 2002) ("*SBI New Mexico Order*"); *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Az. Corp. Comm. Dec. 15, 2000) ("*SBI Arizona Order*"); *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) ("*Midwest Iowa Order*"); *RFB Cellular, Inc.*, Case No. U-13145 (Mich. P.S.C. Nov. 20, 2001) ("*RFB Michigan Order*"); *RCC Minnesota, Inc.*, Docket No. UT-023033 (Wash. Util. & Transp. Comm. Aug. 14, 2002) ("*RCC Washington Order*").

23. The public interest is to be determined by following guidance provided by Congress in adopting the 1996 amendments to the Act (“1996 Act”) and the FCC in its enabling orders.<sup>13</sup> The overarching principles embodied in the 1996 Act are to “promote competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies.”<sup>14</sup> In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.<sup>15</sup>

24. The PSC must determine whether designation of Hargray as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>16</sup>

25. In considering whether Hargray’s designation will bring new and cost-effective services to rural areas, the PSC may properly weigh the public cost against the public benefits. The Minnesota Public Utilities Commission, for example, used such a balancing test in its analysis of Minnesota Cellular’s application for ETC designation, determining that the petitioner had produced credible evidence of its intent and ability to offer service and the benefits to

---

<sup>13</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996); *See also*, *First Report and Order*, *supra*; *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”); *Fourteenth Report and Order*, *supra*. *See also* *NAACP v. FPC*, 425 U.S. 662, 669 (1976); *accord*, e.g., *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

<sup>14</sup> 1996 Act (preamble).

<sup>15</sup> *First Report and Order*, *supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order*, *supra*, 14 FCC Rcd at 20480.

<sup>16</sup> *See* 47 U.S.C. § 254(b)(3).

Minnesota consumers.<sup>17</sup> The benefits to consumers were weighed against costs, which the ILECs mostly claimed to be costs to their business.

26. There are also factors that should *not* be considered in evaluating the public interest analysis. For example, the amount that the federal universal service fund will grow as a result of Hargray's designation is not the type of "cost" which should be considered in making the public interest analysis. Neither Congress nor the FCC has ever suggested that potential growth in the federal fund may be a component of a state's public interest analysis. To the contrary, the FCC has taken a number of actions which make absolutely clear that growth of the fund in absolute terms is not a concern to be addressed by the states or as part of any ETC designation proceeding.

27. For example, in December 2002, the FCC specifically refused to consider the growth of the fund in the context of an individual competitive ETC ("CETC") petition, rejecting ILEC arguments stating, "these concerns are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC."<sup>18</sup> The December 2002 decision came after the FCC had already taken up this issue in the course of reviewing the Commission's rules relating to high-cost universal service support in CC Docket No. 96-45. In that proceeding the FCC specifically asked for public comment on whether any changes to the mechanism for providing support to CETCs should be modified.<sup>19</sup> Thus, the sufficiency and sustainability of the federal USF are properly being addressed at the federal level. In any event, the potential effect of Hargray's designation on the USF is negligible: Hargray estimates that in its first year it will receive considerably less than one percent of the roughly \$3.5 billion highest support fund.

---

<sup>17</sup> See *Minnesota Cellular Corporation*, Docket No. P5695/M-98-1285 at pp. 16-18 (Minn. PUC Oct. 27, 1999).

<sup>18</sup> *RCC Alabama ETC Order*, *supra*, at ¶ 32.

<sup>19</sup> See *Referral Order*, *supra*.

28. Hargray submits that the proper focus of the public interest analysis is on the numerous public interest benefits that will accrue to South Carolina consumers as a result of Hargray's designation, as follows:

**A. Increased Consumer Choice and Service Quality.**

29. Designation of Hargray as an ETC will promote competition and facilitate the provision of advanced communications services to the residents of rural South Carolina. Residents in many rural areas have long trailed urban areas in receiving competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

30. To date, a number of wireless carriers have been designated as ETCs in multiple states.<sup>20</sup> Recognizing the advantages wireless carriers can bring to the universal service program, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."<sup>21</sup> The FCC recognized this fact in its initial decision designating Western Wireless as an ETC in the State of Wyoming, observing: "Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."<sup>22</sup>

31. In the first year that it receives support, although not required to do so by federal law, Hargray commits to improve service in areas it would not otherwise invest in. The improved service quality, reliability, and increased choices to rural South Carolina will be significant. As Hargray constructs additional cell sites in high-cost areas to improve the quality

---

<sup>20</sup> See, e.g., *RCC Washington Order*, *supra*; *Guamcell*, *supra*; *Cellular South Alabama Order*, *supra*; *NECC Colorado Order*, *supra*; *Midwest Minnesota Order*, *supra*; *RCC Alabama Order*, *supra*; *Pine Belt Order*, *supra*; *RFB Michigan Order*, *supra*; *Midwest Iowa Order*, *supra*; *Western Wireless Wyoming Order*, *supra*; *SBI Arizona Order*, *supra*; *SBI New Mexico Order*, *supra*.

<sup>21</sup> *First Report and Order*, 12 FCC Rcd at 8881-82.

<sup>22</sup> *Western Wireless Corporation*, *supra*, 16 FCC Rcd at 55.

of its radio frequency (“RF”) signal, its customers will have a greater choice among service providers and will receive more reliable service. Some will have the option to receive Hargray’s service for the first time. Others will see service quality and reliability improvement such that they may choose Hargray’s service instead of ILECs, as opposed to confining their use of Hargray’s service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer.<sup>23</sup>

**B. Health and Safety Benefits.**

32. Similarly, in designating the cellular carrier Smith Bagley, Inc. as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to “health and safety risks associated with geographic isolation.”<sup>24</sup> Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. It is self-evident that every time Hargray adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years — but E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that Hargray constructs, the reliability and performance of Hargray’s E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure.

**C. Competitive Response.**

33. One of the principal goals of the 1996 Act was to “promote competition and reduce regulation in order to secure lower prices and high-quality services for American

---

<sup>23</sup> Lowering of prices has never been an issue in the wireless industry, not to mention that if a carrier does not use funding as required ETC status may be revoked.

<sup>24</sup> *SBI Arizona Order, supra*, at p. 12.

telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>25</sup> Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer’s business.

34. There is no question that if Hargray is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs. Service quality and customer service will improve. New investments in plant will be made. High-speed data (DSL) may be deployed more quickly to retain and attract customers. Wider local calling areas, bundled service offerings, and lower prices overall will be introduced to compete with Hargray to retain and attract customers.

35. The public interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless’s ETC designation in Wyoming would have on rural telephone companies, the FCC said:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.<sup>26</sup>

Further, Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.” *See* 47 U.S.C. §253(b). Hargray will provide consumers with wider local calling areas, mobile communications, a variety of service

---

<sup>25</sup> *See* 1996 Act (preamble).

<sup>26</sup> *Western Wireless Wyoming Order, supra*, 16 FCC Rcd at 57; *See also RCC Washington Order, supra*, at pp. 16-17.

offerings, high-quality service, and competitive rates. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

36. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost support to Hargray will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of South Carolina.<sup>27</sup>

37. The consumer benefits of designating a competitive ETC are already becoming evident. Competitive carriers in Arizona, Colorado, New Mexico and Mississippi have earmarked high-cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital.

38. With high-cost support in South Carolina, Hargray will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

## **V. Hargray Requests Redefinition of UTC's Service Area**

39. With respect to those rural LEC service areas that Hargray does not serve completely, redefinition of incumbent LEC service areas pursuant to Section 54.207(c) of the FCC's rules is necessary. The FCC has already recognized the need to disaggregate support within rural *study areas* for purposes of calculating Universal Service funding in its *Fourteenth*

---

<sup>27</sup> See *United States Cellular Corp. et al., Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carrier*, Docket No. UT-970345 at ¶ 43 (Wash. Util. & Transp. Comm. Jan. 27, 2000) ("The fact that its competitors receive universal service support puts USCC at a disadvantage in its ability to make cellular technology more widely available at competitive prices. Allowing USCC to receive universal service support increases the likelihood that cellular technology will become available to more rural consumers at an affordable price.")

*Report and Order*, noting that such action “achieves a reasonable balance between rural carriers’ needs for flexibility and the Commission’s goal of encouraging competitive entry.”<sup>28</sup> In the instant case, *service area* redefinition is necessary in order to facilitate competitive entry.

40. Accordingly, with respect to the study area of UTC, which Hargray does not serve in its entirety, Hargray requests that its designated ETC service area be defined consistent with those wire centers set forth at Exhibit D hereto. To enable Hargray to be designated as an ETC in the area requested, Hargray asks that the PSC classify each wire center listed on Exhibit D as a separate service area. Where Hargray serves only a portion of a wire center listed, it requests that it be designated as an ETC in that portion of the wire center which it is authorized to serve.<sup>29</sup> Once the PSC establishes redefined service areas for the affected LECs, either the PSC or Hargray may file a petition requesting the FCC to concur with the state’s decision.

41. In considering the redefinition of a rural LEC service area, the PSC must take into account the recommendations of the Joint Board. In the *Recommended Decision*<sup>30</sup> which laid the foundation for the FCC’s *First Report and Order*, the Joint Board recommended that rural telephone company service areas initially be defined as the carrier’s study area. The Joint Board highlighted three issues that warrant consideration by the FCC and state commissions when redefining a service area.

42. First, the Joint Board noted that breaking down ETC service areas below the study area level may create the potential for “cream skimming,” *i.e.*, only proposing to serve the

---

<sup>28</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, 16 FCC Rcd 11244, 11302 (2001) (“*Fourteenth Report and Order*”).

<sup>29</sup> Those wire centers that Hargray partially serves are indicated on Exhibit D with an asterisk.

<sup>30</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) (“*Recommended Decision*”).



lowest-cost exchanges.<sup>31</sup> As a wireless carrier, Hargray is restricted to providing service in those areas where it is licensed by the FCC. Hargray is not picking and choosing the lowest-cost exchanges. On the contrary, Hargray has based its requested ETC area solely on its licensed service area and has not targeted low-cost portions of incumbent LEC service areas. Moreover, as of May 2002, rural incumbent LECs will have been required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive to enter into incumbent LEC service territories in an uneconomic manner.<sup>32</sup>

43. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.<sup>33</sup> In deciding whether to designate Hargray as an ETC, the PSC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). As the Joint Board observed, Congress mandated this public interest analysis in order to protect the special status of rural carriers — much in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>34</sup>

44. Accordingly, if the PSC finds that Hargray's ETC designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether Hargray's service area designation should be adopted for federal universal service funding purposes. Further, Hargray notes that no action in this proceeding will affect or prejudice any future action the PSC or FCC may take with respect to the LECs' status as a rural telephone company.

---

<sup>31</sup> *Recommended Decision*, 12 FCC Rcd at 179-80.

<sup>32</sup> *See Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11302.

<sup>33</sup> *See Recommended Decision*, 12 FCC Rcd at 180.

<sup>34</sup> *Id.*

45. Finally, the Joint Board recommended that the FCC and state commissions consider the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.<sup>35</sup> In the instant case, Hargray is proposing redefinition of rural LEC service areas solely for ETC designation purposes. Redefinition for ETC purposes will in no way impact the way the affected rural LECs calculate their costs, but it is solely to determine the LEC area in which Hargray is to be designated as an ETC.<sup>36</sup> Accordingly, redefinition of rural LEC service areas as proposed in this Application will not impose any additional burdens on rural LECs.

## **VI. High-Cost Certification**

46. Under FCC Rule Sections 54.313 and 54.314, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, self-certify with the FCC and the Universal Service Administrative Corporation (“USAC”) their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. Hargray attaches its high-cost certification letter as Exhibit E hereto. Hargray respectfully requests that the PSC issue a finding that Hargray has met the high-cost certification requirement and that Hargray is, therefore,

---

<sup>35</sup> *Id.*

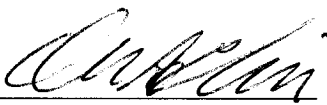
<sup>36</sup> LECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC’s *Fourteenth Report and Order* and its November 2001 *MAG Order*. See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11304 n.377; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98077 and 98-166*, 16 FCC Rcd 19613 (2001) (“*MAG Order*”).

entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.<sup>37</sup>

WHEREFORE, pursuant to Section 214(e)(2) of the Act, Hargray respectfully requests that the PSC (1) enter an Order designating Hargray as an ETC for its proposed ETC service area as shown on Exhibit A hereto; (2) certify to the FCC that Hargray will use the support for its intended purposes; and (3) enter its Order at the earliest possible date.

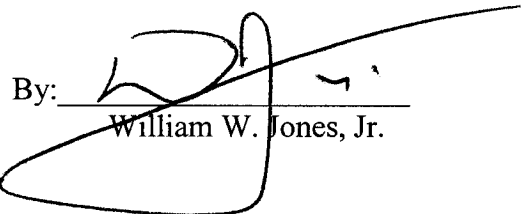
Respectfully submitted,

**Hargray Wireless, LLC**

By:   
David A. LaFuria  
Steven M. Chernoff

Lukas Nace Gutierrez & Sachs, Chartered  
1111 Nineteenth Street, N.W.  
Suite 1200  
Washington, D.C. 20036

July 18, 2003

By:   
William W. Jones, Jr.

Jones Patterson Simpson & Newton, P.A.  
18 Pope Avenue  
P.O. Drawer 7049  
Hilton Head, South Carolina 29938

---

<sup>37</sup> See, e.g. *Guam Cellular and Paging, Inc. Petition for Waiver of FCC Rule Section 54.314*, CC Docket 96-45 (filed Feb. 6, 2002).